

ANDOVER BOARD OF HEALTH
Minutes
June 13, 2011, 6:00 P.M.
First Floor Conference Room
36 Bartlet Street

The Board of Health Meeting was called to order at 6:02 p.m. Present were Ms. Candace B. Martin, Chairman, Dr. Donald H. Miller, Vice-Chairman, Ms. Katherine Kellman, Clerk, and Mr. Thomas G. Carbone, Director of Public Health.

I. Approval of Minutes

- **Executive Session of October 4, 2010** – Mr. Carbone explained that this concerns a pending lawsuit, and he recommended that the Board put off any decision for a period of six months.

Motion by Ms. Martin seconded by Dr. Miller to continue the Executive Session for six months based on the status of the pending lawsuit. Unanimous approval.

- **Regular Meeting of May 9, 2011**

Motion by Ms. Martin seconded by Ms. Kellman to approve the Minutes of the Meeting of May 9, 2011 with the following correction:

- *On page one, under **II. Appointments & Hearings**, • 6:00 p.m. – Ben Osgood, Jr. for 30 Fosters Pond Rd., LUA to allow SAS 86’from a Well, 100’ required; SAS 17’ to Foundation, 20’ Required, second to last sentence, after “...other location for the wells”, end sentence there and take out “but determined that the requested location and system were the best under these circumstances.”*

Dr. Miller abstained.

II. Appointments & Hearings

- **Reappoint Staff** – The Board votes on a yearly basis on appointments of Health Agents and other staff.
 - A. **Board reorganization** - required annually in accordance with the provisions of M.G.L.c. 111, §27, the Board must elect a Chair, Vice Chair, and Clerk.

Motion by Dr. Miller, seconded by Ms. Kellman, to appoint Ms. Martin as Chair, Dr. Miller as Vice-Chair, and Ms. Kellman as Clerk. Unanimous approval.

B. Staff Appointments - In accordance with the provisions of M.G.L.c. 111, §30, the Board of Health appoints the following persons to serve as its agents and officers for the fiscal period of July 1, 2011 through June 30, 2012, and beyond as necessary to serve at the pleasure of the Board. Said appointment is for regulatory authority only and does not guarantee any salary or fee.

Permanent Staff

Thomas G. Carbone as Director of Public Health
Joanne Martel, R.N. as Assistant Director of Public Health/Public Health Nurse
Daniel H. Tremblay as Sanitarian
Patricia Crafts as Health Agent.
Jane Morrissey, R.N. as Part Time/Public Health Nurse
Ronald Beauregard as Agent (Healthy Communities Tobacco Control Program)
Robert Douglas as Agent (Conservation Director)
Linda Cleary as Agent (Conservation Agent)
Vacant as Agent (Plumbing Inspector)
David Dargie as Agent (DPW Construction Engineer)
Anthony Turiano, M.D. as Board of Health Physician

Contract Staff (on call as needed)

Michelle Grant as Agent
Charlene Gagnon as Public Health Nurse
Nanci MacKenzie as Public Health Nurse
Janet Clarke as Public Health Nurse
Kay Devanna as Public Health Nurse

C. Emergency Appointments – In accordance with the provisions of M.G.L.c. 111, §30, the Board of Health hereby authorizes the Director of Public Health or the next person in succession to make emergency appointments of Health Agents with the verbal approval of the Chairman of the Board of Health or a member in succession, and the Town Manager. Said appointments shall expire in 7 days unless otherwise extended by the Board of Health, and shall be for emergency purposes only.

Please note that this final section is intended to ease the use of mutual aid services from other communities in the event of an emergency requiring swift response. It transfers the Board's authority to those responding agents and legalizes their actions. Said responding agents will be under the direction of a permanently appointed agent.

Motion by Ms. Martin, seconded by Ms. Kellman, to appoint Permanent Staff, Contract Staff (on call as needed), and Emergency Appointments with corrected appointment dates of July 1, 2011 through June 30, 2012. (Changes have been made above). Unanimous approval.

- **6:00 p.m. – David Kiu for Peking Garden – Show Cause Hearing (Continued)** – Present were Mrs. Sandy Kiu, owner, and her friend Janice to represent Mrs. Kiu. Mr. Carbone informed the Board that there are still critical violations happening at the restaurant such as improper food temperatures, raw meats stored with ready to eat

foods, pots in the mop sink, and cleaning issues as well. Mr. Carbone received the Private Inspector's report for March and April, but not for May. When the Health staff conducted an inspection in June, critical violations were still found. Mrs. Kiu's friend explained to the Board that Mr. David Kiu who the Board has been dealing with during the past couple of years will no longer be the person in charge – Mrs. Kiu will take over that responsibility. Ms. Martin asked why there was no Private Inspector's report for May, and Mrs. Kiu said that one was conducted and no violations were found. Mrs. Kiu informed the Board that she will bring in the inspection report for our records. The Board was very concerned about the continuing violations and the fact that the language barrier still seemed to be an issue when the Board thought the Private Inspector was picked as one who could communicate. Mrs. Kiu explained that there are different dialects and that the Private Inspector spoke a different dialect than her and her staff. Discussion followed about the concerns the Board has with public safety since the violations are continuing. The Board stressed that with the continuous repeat critical violations they see, there is a good possibility that public health could be severely impacted and could result in serious illness or death. The Board was disappointed that their required two-day shutdown in March for in-house training did not seem to help as expected.

Mrs. Kiu stated that she would be the one in charge now and she has more experience and wants to do whatever she needs to do to make the needed improvements the Board requires. She will come to the office during office hours to look at the file and get a complete history of what has been occurring over the years so she can address them. Mr. Carbone will give her a list of Private Inspectors so that she can hire someone who speaks their dialect.

Motion by Ms. Martin, seconded by Dr. Miller for discussion only, to continue the Show Cause Hearing for another three months, with the requirement that there will be monthly inspections by a Private Inspector, and if there are any critical violations during that time, a meeting with the Board would be required at the next scheduled Board of Health Meeting.

Discussion: Dr. Miller asked how many critical violations does the Board need to see before there needs to be an automatic shutdown of this business. Ms. Kellman agreed that the Board should consider doing that. Mr. Carbone informed the Board that it could not do an automatic shutdown because the owner needs to appear before the Board if any other critical violations come up so she can present her case. A special Board Meeting could also be called if necessary.

Ms. Martin restated her motion to continue the Show Cause Hearing for another three months, with the requirement that there will be monthly inspections by a Private Inspector, and if there are any critical violations during that time, a meeting with the Board would be required at the next scheduled Board of Health Meeting. Ms. Martin polled the Board Members: Ms. Martin, aye; Dr. Miller, aye; Ms. Kellman, aye. Unanimous approval.

- **6:20 p.m. – Eva Xu for Teatone – Show Cause Hearing (Continued)** – Mr. Carbone informed the Board that Ms. Xu requested to continue the Show Cause

Hearing to the next Board of Health Meeting because she had a family medical emergency.

Motion by Ms. Martin, seconded by Ms. Kellman to continue the Show Cause Hearing to the next regularly scheduled Board of Health Meeting of July 11, 2011. Unanimous approval.

- **6:40 p.m. – Ben Osgood, Jr. for 30 Fosters Pond Rd., LUA to allow SAS 86’ from a Well, 100’ required; SAS 17’ to Foundation, 20’ Required** – Mr. Ben Osgood, Jr. was present. At the last Board of Health Meeting, the Board needed more information from Mr. Osgood concerning well testing and maintenance. The well test was completed and showed that the coliform detection level was less than 2. Mr. Carbone stated that he would get verification from the Water Department that the number meant “an absence of coliform”. There was a question if the neighbor wanted to share the well, but the neighbor declined. Mr. Osgood stated that the footprint was staying the same; they are changing the house from a one-story to a two-story. Mr. Carbone stated that a deed restriction to keep the bedroom count at two should be made prior to the issuance of a foundation permit.. Ms. Kellman asked about the requirement that a deed notice be filed requiring that the well will be tested annually and wanted to know what would happen if the water test came back with bad results. Mr. Carbone explained that the source of the contamination must be determined but that would be an issue between the two property owners. Another deed restriction should be filed stating that the property have no more than two bedrooms and five rooms. Also, a garbage grinder would not be allowed under this plan.

Motion by Ms. Martin, seconded by Dr. Miller, to approve the LUA to allow SAS 86’ from a well, 100’ required, SAS 17’ to foundation, 20’ required with the following conditions:

1. *The applicant must install the new well serving this property and test its water quality prior to the issuance of a foundation permit; a certified plot plan showing the location of the new well and all septic systems within 200’ of the well must be submitted at that time as well.*
2. *The adjacent well at 29 Fosters Pond Road within 100’ of the SAS must be tested by June 1st of each year at the expense of the owner of the property at 30 Fosters Pond Road.*
3. *A deed restriction stating that the property shall have no more than 2 bedrooms and 5 rooms total shall be filed at the Registry of Deeds, and shall run with the property. This must be done prior to the issuance of a foundation permit, at the expense of the property owner.*
4. *The local upgrade approval notice shall be recorded at the Registry of Deeds, to run with the property. This must be done prior to the issuance of a foundation permit, at the expense of the property owner.*
5. *A deed notice shall be filed for the property at 29 Fosters Pond Road (the location of the affected well) that the well will be tested annually by June 1st of each year at the expense*

of the owner of 30 Fosters Pond Road. This must be done prior to the issuance of a foundation permit.

6. *The septic system is not designed for use with a garbage grinder, and therefore no garbage grinder shall be installed in the dwelling; this shall be stated on the deed restriction*

Ms. Martin polled the Board Members with the following results: Ms. Martin, aye; Dr. Miller, aye. Ms. Kellman abstained. Vote was two for approval, one abstention.

- **6:50 p.m. – Attorney Jonathan Pickering for 14 Longwood Drive, Unit # 11 – Appeal of ORDERS** – Mr. Carbone presented the Board with an e-mail from Attorney Pickering withdrawing his request for the Hearing in front of the Board of Health because his client will be fixing the 24 hour emergency violations.¹ Mr. Carbone informed the Board that he received a letter stating that the tenant would be evicted at the end of June and that the Landlord has agreed to go into the unit this week to do emergency repairs. Technically the heating issue is taken care of as well as the air conditioning issue, and the plumber will be in this week to fix the drain. The tenant is aware that she has to let people in so that these issues can be dealt with.
- **7:00 p.m. – Dean Varney for Starbucks – Variance Request to Allow Dual Use of a Sink** – Present were Dean Varney, Retail Quality Assurance Specialist for Starbucks, and Elizabeth Brown, Store Manager. Mr. Carbone explained that at the last inspection, the Inspector realized that a sink was being used for a dual purpose, so Starbucks was cited for using a dump sink as a rinse station also. Mr. Varney has requested a Variance to allow the use of a single sink to serve as a dump station as well as a rinse station for their blender. Mr. Varney explained that they have in-use pitchers for the blenders that make the frappuccinos and for the steaming pitchers and that they use the dump sink, which is away from the handwashing sink. In this sink is a blender/pitcher rinser, which is an inverted spring loaded faucet, similar to a dipper well, but instead of filling running water all the time, it is always on. The water doesn't run until you invert the pitcher and press it down upon a spring loaded nozzle, and then water sprays up like a fountain and rinses. The issue is that the drain that is also in this sink is where they discard coffee and the small amounts of leftover milk from pouring cappuccinos and steamed milk, as well as the little bit of frappuccino that is left after they pour out what they blended. The question was that this rinsing sink was accepting wastes and therefore contaminating the rinsing station, but the point is that this is edible food so it is not a contaminate; it is coffee, milk, and frappuccino that is still wholesome. The main item that is a potentially hazardous food is the milk. The rinsing is an on-going in-use process and then the utensils that are being rinsed by this item are sanitized every two hours by Starbucks' standards, which is more often than the four hours required by law.

Mr. Carbone stated that the items were not considered sewage, but waste product, so the longer they sit there they become out of temperature, but there is a possibility that

¹ The e-mail from Attorney Jonathan Pickering, Esq. is entered into the packet after page 33.

you may dump coffee that a customer doesn't want. Mr. Varney informed the Board that consumed coffee is not dumped into that sink; consumed coffee is dumped in the sink behind the counter only. Mr. Carbone stated that he did look at the rinser with the Plumbing Inspector and came up with a different issue - when the rinser is put in the sink, you take away the idea of the air gap between the nozzle in and the flood level of the sink. Mr. Varney explained that the product has an internal check valve in the unit itself. It has a system so as long as water is going through in one direction it is allowed to flow, but as soon as the pressure reverses, the ball stops up the hose and discontinues service. Mr. Varney said he will send the cut sheet to the plumber so he can check out the product.

Motion by Ms. Martin, seconded by Dr. Miller, to close the Hearing, upon having learned more about the practices, and to allow the Variance request to allow dual use of a sink and the use of the Blender/Pitcher Rinser. Unanimous approval.

III. Discussion

- **Set Summer Schedule** – The Board decided on the Board of Health Meeting dates as follows: Monday, August 15, 2011 and Monday, September 12, 2011.

IV. Old Business

- **Santangelo Court Case** – Mr. Carbone informed the Board that the court case has been continued for another two weeks. When he appeared before the judge last Tuesday, the judge asked if there was improvement, and Mr. Carbone replied that there was. When the judge asked how long it should take them to finish, Mr. Carbone replied that they would probably take a while. At this point, the judge told their Attorney that he needed to see both Mrs. Santangelo and her son Mark in the courtroom in two weeks. Mr. Carbone told the Board that he planned to go over to the Santangelos' house to try to help them. The screen porch is full of bags, but when Mr. Carbone was over there the last time Mark wouldn't let him in to help. The situation is difficult because Mrs. Santangelo is in her 80's and in ill health. Mr. Carbone still has complaints coming in from the neighbors stating that they have seen rodents in the area, but when Mr. Carbone checked things out, he did not find any rat burrows.

V. Definitive Subdivision Plans

- N/A

VI. Plan Review

A. D.W.R.P. Variances/Local Upgrade Approval (LUA)

- N/A

VII. Staff Reports

A. Director's Reports:

- **Important Dates:**

- July 11, 2011 @ 6 p.m. – Board of Health Meeting
- August 19 through 28 – Director's Vacation

- **Update on Interns (Not on Agenda)** – Mr. Carbone informed the Board that two Interns have started their work with the Health Division. On Tuesday, Mr. Carbone will be going to Boston University to meet with the Accreditation team because they are being reviewed by the National Accreditation Program for the School of Public Health. He will be talking about how wonderful the students are and the good work that they do for us.

B. Nurses' Reports for May, 2011 – The Nurses' Reports for May 2011, were for informational purposes only.

C. Inspectors' Reports for May, 2011 – The Inspectors' Reports for May, 2011 were for informational purposes only.

VIII. Board Member Reports

- N/A

IX. Adjournment

Motion by Ms. Martin, seconded by Ms. Kellman, to adjourn at 7:32 p.m. Unanimous approval.